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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,207	06/22/2001	Wilfred A. Keller	S&B-C100	5571

30132 7590 10/03/2002

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EXAMINER

FOX, DAVID T

ART UNIT PAPER NUMBER

1638

DATE MAILED: 10/03/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.



## Office Action Summary

Application No.

09/886,207

Applicant(s)

Keller et al

Examiner

FOX

Group Art Unit

1638

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

-1-

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-58 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-58 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary



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The preliminary amendment filed 22 June 2001, which amended the specification and added claims, was not entered because it was unsigned. The preliminary amendment of 24 September 2001 was not entered, because it referred to the previously non-entered amendment. Claims 1-58 are pending and subject to a restriction requirement as set forth below.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14, 17-23, 28-35, 40-44, 49-51 and 58, drawn to constructs comprising *Agrobacterium*-derived conditionally lethal oncogenes, methods for their use to select transform plants and/or remove them from the environment, and the resultant plants, classified in class 800, subclass 288, for example.
- II. Claims 15-16, drawn to constructs comprising microbial conditionally lethal genes conferring a non-toxic substance into a toxic one, classified in class 536, subclass 23.7, for example.
- III. Claims 24-27, 36-39, 45-48 and 52-55, drawn to transformed high oleic acid *Brassica* plants including a particular cultivar, classified in class 800, subclass 306, for example.
- IV. Claims 56-57, drawn to methods of culturing *Brassica* on NAA-containing medium, classified in class 435, subclass 431, for example.

The inventions are distinct, each from the other because:

Inventions I-IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different



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functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation and different effects.

The invention of Group I involves Agrobacterium-derived oncogenes, methods for visual identification of cell proliferation phenotypes, and methods for whole plant removal or subculturing to plant recovery media, each not required by Groups II and IV.

The invention of Group II requires non-Agrobacterium-derived conditionally lethal genes which are not oncogenes, and which encode products which convert non-toxic substances to toxic ones, not required by any other group.

The invention of Group III requires particular Brassica genotypes, including high oleic acid genotypes or a particular cultivar with a particular allele at every locus, each not required by any other group.

The invention of Group IV does not require any transgenes which are required by Groups I-III, and requires Brassica tissue culture methods not required by Groups I-II.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, classification and fields of search, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any



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amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (703) 308-0280. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached on (703) 306-3218. The fax phone number for this Group is (703) 872-9306. The after final fax phone number is (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

September 30, 2002

DAVID T. FOX  
PRIMARY EXAMINER  
GROUP ~~180~~ 1638

A handwritten signature in black ink, appearing to read "David T. Fox", written over the typed name and group number.